

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHNSON, *et al.*,

Plaintiffs,

vs.

CALLANEN, *et al.*,

Defendants.

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Civil Action No.: 5:22-cv-00409-XR

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [DOC. 48]**

Now Comes Bexar County, Texas and Bexar County Election Administrator Jacquelyn Callanen to file this their Response to Plaintiffs' Motion for Summary Judgement. The Bexar County Defendants will show the Court as follows:

1. Defendants have made their arguments concerning the application of the Americans with Disabilities Act in their Motion for Summary Judgment.
2. Currently the Texas Legislature is in session and a number of bills are being considered that might resolve this issue without a decision of this Court.¹ For example:

¹ Currently at least 84 bills relating to election access and integrity are pending before the 88th Texas Legislative Session. State Rep. John Bucy, D-Cedar Park, filed some two dozen of them. Bucy stated, "I think one area where we could see some substantive changes in relation to elections is around individuals with disabilities. There's been some bipartisan support." Tom Abrahams, *84 Election-related bills already filed for 2023 Texas Legislative Session*, Jan. 3, 2023, ABC News (Houston).

3. **HB 3159** – “relating to the use of an accessible absentee mail system by certain voters”
4. This bill amends the general early voting chapter of the Election Code (Ch 81) to add a new section which provides that persons voting by mail by FPCA or due to disability as defined in 82.002 may vote using “an accessible absentee mail system [that] must be an electronic system, including software, used for the sole purpose of enabling any voter, including a voter who has a disability, to mark the voter's ballot and print and submit the ballot in the manner required by law for a ballot marked by the voter”.
5. The Secretary of State will be responsible for adopting and implementing rules and procedure. The voted ballot would still have to be submitted via mail as this does not allow for any electronic submission; therefore, the voter would still need an assistant to help them complete the carrier envelope, but the vote selections could be private.
6. This bill was filed on March 1, 2023.
7. **HB 296/SB 477** – “relating to accommodating voters with a disability”
8. This bill amends Section 63.0015 of the Election Code, which is currently a code that references how to accept a voter with disabilities who is voting in person. This bill also amends Section 84.013 to include

that an Elections Administrator must put the Application for Ballot by Mail (“ABBM”) online in a format that is fillable online before being printed and that if “a voter is eligible for early voting by mail on the ground of disability, the balloting materials may be provided by e-mail in PDF format, through a scanned format, or by any other method of electronic transmission authorized by the secretary of state in writing. The Secretary of State shall adopt procedures to implement this subsection.” This bill says basically the same thing as HB 3159.

9. HB 296 was filed on November 14, 2022 and went to committee on February 23, 2023. There have not been any amendments at this time and it remains in committee
10. SB 477 was filed on January 17, 2023 and went to committee on February 17, 2023. There have not been any amendments at this time and it remains in committee
11. **HB 2776** – “relating to early voting by mail”
12. This bill adds the same section to Chapter 81 as HB 3159 but it also adds a new chapter to Title 7 which is for certain special voting situations like FPCA or late ballots due to sickness.
13. This new chapter states that anyone voting under section 82.002 may request that the Election Administrator email their balloting materials to

them and then Election Administrator must grant the request if the voter has submitted a valid application, is voting on the grounds of disability, provides an email, the request is submitted by the 7th day before election day, and no other ballot has been received by the voter.

14. The Secretary of State will prescribe the procedures and the ballot that can be provided by PDF, scanned, or any appropriate method. The ballot must be returned by mail, but has until the 6th day after election day to arrive. This section gives the most detail about the process.
15. This bill was filed on February 23, 2023 and referred to committee on March 13, 2023. There have not been any amendment and it remains in committee
16. **HB 2379** – “relating to the ability of voters with certain disabilities to cast a secret ballot”
17. This bill adds a new chapter to Title 7 of the Election Code which is entitled “Accessible Voting systems for Voters With Certain Disabilities.” The chapter only applies to a voter who is eligible under section 82.002(a)(1) which is a voter who “has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.”

18. This chapter requires the Secretary of State to build an “online assistive tool” which allows a voter “to complete an application for a ballot to be voted by mail or mark a ballot online with the use of assistive technology.” The chapter requires that this tool allow a voter to complete an application and the ballot materials without assistance.

19. A person to whom this chapter applies may:

- (1) print an application completed under Subsection (a) and submit the voter's application for a ballot to be voted by mail in the same manner as provided by Section 84.007;
- (2) request e-mail transmission of balloting materials under this chapter from the appropriate early voting clerk; and
- (3) print marked balloting materials transmitted under Subdivision (2) and submit the voter's balloting materials in the same manner as provided by Section 101.102.

20. This bill was filed on February 25, 2023 and referred to committee on March 9, 2023. There have not been any amendments and it remains in committee

21. The decision that the Plaintiffs want this Court to make should not be made on the position of one county in the State of Texas. Any decision that this Court makes would apply to every county in the State of Texas and probably voting entities in other States. Decisions concerning the election process and in interpreting the Election laws concerning the

ability of disabled voters to vote by ballot are better made at the State level, not a County level.

THEREFORE, FOR THE REASON STATED ABOVE, Bexar County and Bexar County Elections Administrator pray that their Motion for Summary Judgment be granted and that Plaintiffs' Motion for Summary Judgment be denied. The Bexar County Defendants further pray for such other relief to which they may show themselves entitled.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I do hereby certify on the 14th day of March 2023, I electronically filed the foregoing with the Clerk of the Court using the CM-ECF system, which will send notification of such filing to the Plaintiff:

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